

CIVIL DISTRICT COURT  
PARISH OF ORLEANS  
STATE OF LOUISIANA

7 GLORIA SCOTT AND \*  
8 DEANIA JACKSON, \*  
9 \* NO. 96-8461  
10 VERSUS \* DIVISION "I"  
11 \* SECTION 14  
12 THE AMERICAN TOBACCO \*  
13 COMPANY, INC., ET AL. \*

17 Transcript of proceedings before the  
18 Honorable Richard J. Ganucheau, Judge Pro Tempore,  
19 Civil District Court, Parish of Orleans, State of  
20 Louisiana, 421 Loyola Avenue, New Orleans, Louisiana  
21 70112, commencing on June 18, 2001.

27 \* \* \* \* \*  
28 Wednesday Morning Session  
29 April 2, 2003  
30 10:30 a.m.  
31 \* \* \* \* \*

## I N D E X

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Wednesday Morning Session

April 2, 2003

10:30 a.m.

\* \* \* \* \*

P R O C E E D I N G S

\* \* \* \* \*

(In open court with a jury present:)

THE COURT:

Good morning. Please be seated.

Doctor, you are still under oath. Do you understand that?

THE WITNESS:

Yes, sir.

THE COURT:

Mr. Wittmann, are you ready to continue with your cross-examination?

MR. WITTMANN:

Yes, I am, Your Honor.

THE COURT:

Proceed.

MR. WITTMANN:

Good morning to you, good morning ladies and gentlemen of the jury.

-- -- --

DORIS E. LeBLANC, M.D.

being previously duly sworn by the Clerk, testifies

and says further as follows:

-- -- --

CROSS-EXAMINATION (Continued)

BY MR. WITTMANN:

Q. Good morning, Dr. LeBlanc?

A. Good morning.

17768

1 Q. Dr. LeBlanc, you told us yesterday that you  
2 disagreed with a number of statements that were in  
3 DSM IV that I went over with you. Do you recall  
4 that?

5 A. Yes, sir.

6 Q. And DSM IV is the fourth edition of the  
7 Diagnostic and Statistical Manual of Mental  
8 Disorders, is it not?

9 A. Yes.

10 Q. And it's published by the American  
11 Psychiatric Association?

12 A. Yes.

13 Q. And that's an organization you used to belong  
14 to?

15 A. Yes.

16 Q. And the manual is compiled, is it not, by a  
17 task force composed of the top psychiatric experts  
18 in the United States?

19 A. Yes.  
20 Q. And it certainly is a peer-reviewed  
21 publication, isn't it?  
22 A. Yes.  
23 Q. And it's constantly being revised to keep it  
24 up-to-date?  
25 A. Yes.  
26 Q. And in fact, the most recent transcript  
27 revision was about the year 2000, was it not?  
28 A. It was published in 2000.  
29 Q. Okay. And the article I showed you yesterday  
30 from the Archives of General Psychiatry, which was  
31 Exhibit SA-4688, it was published in the year 2001  
32 by the American Medical Association?

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1 A. The article you showed me, yes.  
2 Q. And you would agree, wouldn't you, that  
3 that's one of the most authoritative journals in the  
4 field of psychiatry?  
5 A. The DSM III?  
6 Q. No, the article I showed you. The exhibit  
7 yesterday was published in the Archives of  
8 General --  
9 A. It was in reference to DSM III. So are you  
10 asking me about that or are you asking me about the  
11 publication in which the article appeared?  
12 Q. The publication, the Archives of General  
13 Psychiatry?  
14 A. Yes.  
15 Q. Okay. And you would agree that is one of the  
16 most authoritative journals in the field of  
17 psychiatry?  
18 A. Yes.  
19 Q. Now, you have practiced psychiatry in the  
20 New Orleans area since the 1980s, and in all those  
21 years you have never heard prior to this case that  
22 the Ochsner Clinic had a formal smoking cessation  
23 clinic?  
24 A. Back in the '80s, I had not heard of that.  
25 Q. Okay. Now, the class representatives,  
26 Ms. Scott and Ms. Jackson, saw doctors at Ochsner,  
27 didn't they?  
28 A. As far as I am aware of, yes.  
29 Q. They saw a Dr. Hickman?  
30 A. Yes, as far as I am aware.  
31 Q. Dr. Hudzinski?  
32 A. Yes, as far as I'm aware.

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1 Q. And a Dr. Baker?  
2 A. A Dr. Baker?  
3 Q. Uh-huh.  
4 A. I'm not familiar with his name.  
5 Q. You didn't refer either Ms. Scott or  
6 Ms. Jackson to any doctor at Ochsner Clinic, did  
7 you?

8 THE WITNESS:

9 Just a point of clarification, I can  
10 discuss the individual representatives?

11 THE COURT:

12 Answer the question unless there is  
13 an objection or unless I stop you.

14 THE WITNESS:

15 All right.

16 A. Would you repeat your question?  
17 Q. Sure. You didn't refer Ms. Scott or  
18 Ms. Jackson to any physician at the Ochsner Clinic,  
19 did you?  
20 A. I recommended cessation and medical  
21 monitoring, but I did not refer them to a specific  
22 doctor at Ochsner.  
23 Q. Dr. LeBlanc, the patients that you see are  
24 basically drug abusers, are they not?  
25 A. The patients I treat have addictions.  
26 Q. My question was they are basically drug  
27 abusers?  
28 A. If you are using the term drug abuse  
29 interchangeably with addiction, then yes, I treat  
30 people that have abuse or problems with drug abuse  
31 who are addicted.  
32 Q. And you have never treated any patient

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1 exclusively for smoking cessation, have you?  
2 A. Not exclusively, that's correct.  
3 Q. Okay. Now, nicotine withdrawal is not  
4 something that lasts forever, is it, Doctor?  
5 A. The actual withdrawal itself, you are  
6 correct, it does not last forever.  
7 Q. And once a smoker quits smoking, isn't all  
8 the nicotine pretty much out of their system in  
9 twenty-four to forty-eight hours?  
10 A. Yes. The withdrawal, however, can last up to  
11 a year.  
12 Q. All right. A year?  
13 A. Yes, sir.  
14 Q. Doctor, do you still have before you the  
15 depositions I handed you yesterday, the transcripts  
16 of your deposition?  
17 A. Yes.  
18 Q. Haven't you testified previously that  
19 withdrawal lasts just three to four weeks?  
20 A. Certain aspects of the withdrawal lasts for  
21 two to three weeks. Certain aspects of the  
22 withdrawal will last for a year or longer.  
23 Q. Would you refer, please, to your deposition  
24 of November 3, 2000, at page 170? And at line 21 --  
25 do you have that page, Doctor?  
26 A. Yes.  
27 Q. I asked you this question: I know that it  
28 takes anywhere from twenty-four to forty-eight  
29 hours -- I'm sorry, this is your answer. Let me go  
30 back and start again.  
31 Starting with line 16:

32 Do you have an opinion, Doctor,  
17772  
1 as to how long a smoker would have to quit  
2 in order to make an attempt to quit  
3 smoking? How long would he have to go  
4 without cigarettes to be a valid attempt  
5 in your opinion?  
6 Answer: I know that it takes  
7 anywhere from twenty-four to forty-eight  
8 hours for nicotine to get out of your  
9 system, and the withdrawal lasts sometimes  
10 weeks. So I would imagine if they -- if  
11 the person is able to get through the  
12 first few weeks, then that would be good.

13 Do you recall me asking you those questions  
14 and you giving that answer?  
15 A. Yes.  
16 Q. Now, we also talked yesterday briefly,  
17 Doctor, about the lifetime prevalence of nicotine  
18 withdrawal among persons who smoke, the prevalence  
19 being about 50 percent. I showed that you in  
20 DSM IV; correct?  
21 A. You showed me that on the screen, yes.  
22 Q. So since DSM IV says that half of the smokers  
23 would meet the criteria for nicotine withdrawal,  
24 that would necessarily mean that half would not meet  
25 the criteria for nicotine withdrawal; correct?  
26 A. According to DSM IV.  
27 Q. And DSM IV also states, doesn't it, Doctor,  
28 that people who quit on their own experience less  
29 nicotine withdrawal than those in treatment programs?  
30 A. If that's what -- if that's what you have  
31 read out of DSM IV, then, yes.  
32 Q. Well, at page 246 of DSM IV, it -- and I will

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1 read this statement to you:  
2 Prospectively it's estimated that  
3 about 50 percent of those who quit smoking  
4 on their own and about 75 percent of those  
5 in treatment programs experience nicotine  
6 withdrawal when they stop smoking.  
7 So that says, does it not, that people in  
8 cessation programs have greater withdrawal problems  
9 than people who quit on their own, does it not?  
10 A. If that's your interpretation of DSM IV,  
11 then, yes.  
12 Q. Well, that's what I just read to you.  
13 A. If that's what you read in DSM IV, that's  
14 what's in DSM IV, yes.  
15 Q. Now, Dr. LeBlanc, do you know of any  
16 psychological tests which validate a diagnosis of  
17 nicotine dependence?  
18 A. Psychological tests are really out of the  
19 realm of psychiatry. That would require a referral  
20 to a psychologist.  
21 Q. I just asked you if you knew of any  
22 psychological tests that validate a diagnosis of  
23 nicotine dependence.  
24 A. Once again, that would be under the auspices  
25 of a psychologist.  
26 But as a general clinical psychiatrist, I am  
27 not aware of any specific tests that I could order  
28 or that I have ordered for the class members that I  
29 have treated to undergo to make a diagnosis.  
30 Q. Okay. So at the end of the day, then, all of  
31 this, the diagnosis of nicotine dependence with  
32 associated nicotine withdrawal, that's a

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1 professional judgment based on each individual  
2 smoker, is it not?  
3 A. That is not correct.  
4 Q. You disagree with that?  
5 A. Yes, sir.  
6 Q. Okay. Well, Dr. LeBlanc, let me ask you  
7 this. Just because a smoker experiences nicotine  
8 withdrawal doesn't mean that the smoker can't quit  
9 smoking, does it?



10 A. I'm not sure I understand your question.  
11 Q. Nicotine withdrawal -- let me rephrase it and  
12 ask it another way.  
13 Nicotine withdrawal doesn't make it  
14 impossible for a smoker to quit smoking, does it?  
15 A. Nicotine --  
16 Q. The fact that a smoker experiences nicotine  
17 withdrawal doesn't make it impossible for him or her  
18 to quit, does it?  
19 A. I really don't see the associations. I don't  
20 understand your question.  
21 Q. Okay. Would you agree, Doctor, that  
22 motivation is the key to quitting smoking?  
23 A. That is important in the process of cessation.  
24 Q. Is it the key?  
25 A. I wouldn't say it's the key.  
26 Q. Well, let me refer you to your deposition  
27 again of November 3rd, 2000.  
28 A. Okay.  
29 Q. And if you would turn, please, to page 179.  
30 At line 18 I ask you this question:  
31 Does every smoker who quits  
32 experience impairment in their social or  
17775  
1 occupational or other important areas of  
2 functioning?  
3 Answer: You once again -- you  
4 have to take in consideration -- key --  
5 motivation to quit. Has a person ceased  
6 based on a personal decision that I want  
7 to quit? That's very important.  
8 Do you recall me having asked that question  
9 and giving that answer?  
10 A. Yes.  
11 Q. Okay. In other words, a smoker who is  
12 motivated to quit can do so regardless of whether  
13 they experience nicotine withdrawal; correct,  
14 Doctor?  
15 A. I don't agree with -- I don't understand that  
16 question and the association that you are making in  
17 that question.  
18 Q. Let me ask you something that you will  
19 understand. Scientific literature confirms, doesn't  
20 it, Doctor, that the most successful quitters quit  
21 cold turkey?  
22 A. That's not the current belief. No, sir, I  
23 don't agree with that.  
24 MR. WITTMANN:  
25 Ted, would you publish Exhibit  
26 AKS-001288?  
27 BY MR. WITTMANN:  
28 Q. You have seen this article before, Doctor?  
29 A. I don't remember it offhand, but I'm going to  
30 read it as you put it up on the screen.  
31 THE COURT:  
32 Don't read it yet. Answer the  
17776  
1 question, if you are able to.  
2 A. No, I don't recognize it at this point.  
3 Q. You do recognize it as a publication of the  
4 Journal of the American Medical Association?  
5 A. I see that, yes.  
6 Q. Okay. And we have established this several

7 times during the course of this trial: That's a  
8 peer-reviewed publication, the JAMA articles?  
9 A. Yes.  
10 MR. WITTMANN:  
11 Your Honor, I would offer Exhibit  
12 AKS-001288 in evidence at this time.  
13 MR. CATES:  
14 I think it's already in, Judge.  
15 THE COURT:  
16 With no objection, it will be  
17 received.  
18 MR. WITTMANN:  
19 May I publish the first page for the  
20 jury, Your Honor?  
21 THE COURT:  
22 You may publish.  
23 MR. WITTMANN:  
24 And I think the jury can see it.  
25 BY MR. WITTMANN:  
26 Q. The article is titled Methods Used to Quit  
27 Smoking in the United States; correct?  
28 A. Is that a question for me?  
29 Q. Yes. That's the title?  
30 A. That's the title of the article, yes.  
31 Q. All right. And a number of people  
32 contributed to that, including a Dr. Michael Fiore?

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1 A. Yes.  
2 Q. Okay. And Dr. Michael Fiore is an expert on  
3 the subject of smoking cessation, isn't he, Doctor?  
4 A. Yes. I have seen his name associated with  
5 that.  
6 Q. In fact, he wrote the clinical guidelines for  
7 the federal government to the Health and Human  
8 Services Department on smoking cessation programs,  
9 did he not?  
10 A. I don't know that specifically.  
11 Q. All right.  
12 MR. WITTMANN:  
13 Ted, could you highlight the first  
14 paragraph under the names of the doctor.  
15 That's it, that whole paragraph.  
16 BY MR. WITTMANN:  
17 Q. Now, you will see, Doctor, right off the bat,  
18 Dr. Fiore said that about 90 percent of successful  
19 quitters and 80 percent of unsuccessful quitters  
20 used individual methods of smoking cessation rather  
21 than organized programs; correct?  
22 A. Yes. Based on his data from 1986, yes.  
23 Q. And he says most of these smokers who quit on  
24 their own used a cold turkey approach?  
25 A. Yes. Based on his data from 1986.  
26 Q. And all this data was drawn from the adult  
27 use of tobacco survey conducted by the government,  
28 was it not?  
29 A. In 1986.  
30 Q. Okay. And do you see the conclusion in that  
31 paragraph, they say:

32 Among smokers who had attempted

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1 cessation within the previous ten years,  
2 47.5 percent of persons who tried to quit  
3 on their own were successful, whereas only

4 23.6 percent of persons who used cessation  
5 programs succeeded.  
6 We conclude that cessation  
7 programs serve a small, but important,  
8 population of smokers that includes  
9 heavier smokers, those most at risk for  
10 tobacco-related morbidity and mortality.  
11 So that tells us, does it not, Doctor, that  
12 over a ten-year period, half of the people who tried  
13 to quit on their own were successful based on  
14 government data, almost half?  
15 A. I don't agree that that would be the  
16 interpretation. But back in 1986, it says:  
17 We conclude that cessation  
18 programs serve a small, but important,  
19 population of smokers that includes  
20 heavier smokers, those most at risk for  
21 tobacco-related morbidity and mortality.  
22 Q. I understand that. Doctor, that's why I  
23 showed the whole thing.  
24 But it concludes, does it not, that 47 and a  
25 half percent of persons who tried to quit on their  
26 own were successful, whereas only 23.6 percent of  
27 those who used cessation programs succeeded? That's  
28 their conclusion, isn't it?  
29 A. Yes.  
30 And to qualify my answer, it says among  
31 smokers who had attempted cessation within the  
32 previous ten years from data from 1986.

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1 Q. Okay, fair enough. But this was based on  
2 government data, was it not?  
3 A. From 1986.  
4 Q. Yeah. So the relief that the plaintiffs are  
5 suing for in this case, Doctor, smoking cessation,  
6 according to this study by Dr. Fiore, that relief of  
7 smoking cessation is less effective than the simple  
8 decision to quit on your own?  
9 A. I don't know. I don't agree with the  
10 conclusion they are drawing. But the data once  
11 again is from 1986.  
12 Q. Okay. And that data shows that smoking  
13 cessation programs are only one half as effective --  
14 MR. CATES:  
15 Objection, Your Honor. It's  
16 repetitious.  
17 THE COURT:  
18 It is repetitious, Mr. Wittmann. Go  
19 on to something else, please.  
20 BY MR. WITTMANN:  
21 Q. Again, Doctor, motivation is actually the key  
22 to quitting smoking, is it not?  
23 MR. CATES:  
24 Objection.  
25 THE COURT:  
26 That's repetitious also,  
27 Mr. Wittmann. Go on to something else,  
28 please.  
29 MR. WITTMANN:  
30 Yes, Your Honor.  
31 BY MR. WITTMANN:  
32 Q. Dr. LeBlanc, nicotine withdrawal doesn't

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1 prevent abstinence, does it?  
2 A. I'm unsure of the association you are drawing  
3 once again.  
4 Q. The fact that a person experiences withdrawal  
5 symptoms, nicotine withdrawal symptoms, doesn't  
6 prevent a smoker from keeping not smoking, not  
7 taking up smoking again?  
8 A. I don't appreciate the association.  
9 My qualification to that response is  
10 withdrawal is part of the addiction itself. But I'm  
11 not understanding the association that you are  
12 drawing.  
13 Q. Well, Doctor, aren't there formal studies  
14 that have concluded that nicotine withdrawal has  
15 very little effect on abstinence?  
16 A. The effect and -- I don't think I can answer  
17 that yes or no.  
18 The effect that nicotine withdrawal has on  
19 someone is to oftentimes lead them back to the use  
20 of the drug.  
21 MR. WITTMANN:  
22 Ted, could you call up for the Court  
23 and counsel Exhibit AZ-002400?  
24 BY MR. WITTMANN:  
25 Q. And Doctor, you recognize this as an article  
26 by Dr. John Hughes in the Journal of Consulting  
27 Psychology?  
28 A. Yes.  
29 Q. And it's a peer-reviewed article?  
30 A. Yes.  
31 Q. And Dr. Hughes is considered to be an expert  
32 in smoking cessation?

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1 A. Yes.  
2 MR. WITTMANN:  
3 Your Honor, I offer in evidence  
4 Exhibit AZ-002400.  
5 MR. CATES:  
6 It's already admitted, Your Honor.  
7 No objection.  
8 THE COURT:  
9 Without objection, it will be  
10 received.  
11 MR. WITTMANN:  
12 Could you turn to the cover page and  
13 publish it to the jury, the title, please?  
14 THE COURT:  
15 You may publish it.  
16 MR. WITTMANN:  
17 And blow that up so everyone can see  
18 it, please, Ted?  
19 BY MR. WITTMANN:  
20 Q. This article deals with Tobacco Withdrawal in  
21 Self-Quitters; correct, Doctor?  
22 A. Yes.  
23 Q. Okay.  
24 MR. WITTMANN:  
25 Would you turn to page 696, please,  
26 and then highlight and blow up the last  
27 summary paragraph.  
28 BY MR. WITTMANN:  
29 Q. Dr. Hughes concludes in his conclusion of  
30 this article, and I will read it:

31 Nicotine replacement is believed  
32 to work by reducing withdrawal. Yet  
17782

1 withdrawal appears to have little effect  
2 on abstinence. Thus how does nicotine  
3 replacement increase abstinence?  
4 So the conclusion is nicotine withdrawal has  
5 little effect on not starting smoking again; is that  
6 correct?  
7 A. That's Fagerstrom in 1988. If that's what's  
8 written in that article.  
9 Q. Doctor, isn't the fact that a motivated  
10 person can quit smoking at any time they decide to  
11 is supported by the Surgeon General's finding on  
12 trends in quitting smoking?  
13 A. In reference to which Surgeon General report  
14 are you referring?  
15 Q. I'm referring to the Surgeon General's report  
16 in 1990.  
17 A. 1990?  
18 MR. WITTMANN:  
19 Put up Exhibit 906, please, Ted.  
20 BY MR. WITTMANN:  
21 Q. You are familiar with the Surgeon General's  
22 reports, are you not, Doctor?  
23 A. Yes.  
24 MR. WITTMANN:  
25 Okay. And I believe all of these are  
26 in evidence, Your Honor. May I publish  
27 the first page?  
28 THE COURT:  
29 You may publish it.  
30 BY MR. WITTMANN:  
31 Q. This is the Report of the Surgeon General in  
32 1990 on the Health Benefits of Smoking Cessation;  
17783

1 correct?  
2 A. Yes.  
3 MR. WITTMANN:  
4 And would you turn, please, to page  
5 590?  
6 And that chart -- blow up the lower  
7 line of that chart, please, Ted, so it  
8 shows the years and we can all see it.  
9 No, on the graph itself, the years  
10 across the bottom. Go up a little bit so  
11 we can see it.  
12 Start with the left-hand side and  
13 blow up that whole last part up. Okay.  
14 BY MR. WITTMANN:  
15 Q. So this is from the year 1964 all the way  
16 through 19 -- up to 1990, really, is it not?  
17 A. I don't see where it's up to 1990, sir.  
18 Q. Do you see it goes '79, '84, it's in  
19 increments of a year for each bar?  
20 A. But down at the bottom it says source ends at  
21 1987, unpublished data.  
22 Q. Okay. But this reflects, does it not, that  
23 there is a trend in increasing smoking over this  
24 period of time going up from about 30 percent in  
25 males up to close to 50 percent? That's what that  
26 chart shows?  
27 A. I don't have the expertise to interpret that

28 chart.  
29 Q. You don't?  
30 A. No, sir.  
31 Q. The chart is titled Trends in the Quit Ratio,  
32 United States, 1965 to 1987, By Gender?

17784

1 A. That's correct.  
2 Q. And you can't interpret that?  
3 A. The answer is no. And I would like to  
4 qualify that.  
5 That's data that is from 1969 to before 1987,  
6 which means there is almost 15 to 17 years of new  
7 data that I have processed.  
8 That makes it difficult for me to go back in  
9 time and understand what was the intent of that  
10 graph, taking just that graph, with the knowledge  
11 that I have at this point.  
12 Q. You don't dispute, do you, Doctor, that the  
13 ratios of quitting smoking have continued to go up  
14 since 1989?  
15 A. I have to disagree with that based on the  
16 knowledge that I have at this point.  
17 Q. In fact, the statistics show today that there  
18 are over 50 million former smokers in the United  
19 States?  
20 A. I have not seen that statistic, sir.

MR. WITTMANN:

22 Ted, could you post Exhibit AZS-0002,  
23 which is the 1988 Health Consequences of  
24 Smoking?

MR. TED MILLER:

26 No. Do you mean 904?

MR. WITTMANN:

28 Yes, I'm sorry. I gave you the wrong  
29 number.

30 And specifically page 466.

31 May I publish, Your Honor?

32 THE COURT:

17785

1 You may publish.  
2 MR. WITTMANN:  
3 And would you highlight the first two  
4 sentences in the last paragraph?  
5 BY MR. WITTMANN:  
6 Q. Doctor, this is from a 1988 report. It  
7 says:  
8 According to the 1985 National  
9 Health Interview Survey, there are  
10 approximately 41 million former smokers in  
11 the United States.  
12 That was as of 1985.  
13 Now, as of 2003, that number is over 50  
14 million, is it not?  
15 A. I don't know that. As I have said earlier, I  
16 have not seen that statistic of 50 million former  
17 smokers.  
18 Q. So your testimony is you are unable to tell  
19 this jury how many former smokers there are in the  
20 United States today?  
21 A. That's correct. And may I qualify that?  
22 Q. If you need to, Doctor.  
23 A. I do need to.  
24 When you say former smoker, you have to

25 understand that that's not at one point in time.  
26 We know the nature of nicotine addiction is  
27 that relapses occur. And so when you look at a  
28 former smoker, you have to define are you talking  
29 about someone at that point who is no longer smoking  
30 but certainly is at risk for experiencing relapses  
31 and then becoming a smoker, an active smoker again,  
32 or when you say former smoker are you talking about

17786

1 someone that is a year after cessation, five years  
2 after cessation, ten years after cessation.

3 So there is a lot more information that I  
4 would have to have in order to make a yes or no  
5 answer to that question.

6 Q. Doctor, I'm talking about 50 million people  
7 who have quit smoking and are not smoking today.

8 A. I have not seen that statistic.

9 Q. You just don't know; is that correct?

10 A. I have not seen that statistic, Your Honor.

11 MR. CATES:

12 Objection, Your Honor. He's being  
13 repetitious.

14 MR. WITTMANN:

15 I will move on.

16 THE COURT:

17 I'm sorry, Mr. Cates, I didn't hear  
18 what you said.

19 MR. CATES:

20 I said he's being repetitious and  
21 it's been asked and answered.

22 THE COURT:

23 Overruled. Next question please,

24 Mr. Wittmann.

25 BY MR. WITTMANN:

26 Q. This article continues or this report goes on  
27 to say that approximately 90 percent of former  
28 smokers report that they quit smoking without formal  
29 treatment programs or smoking cessation devices,  
30 citing again Dr. Fiore; correct?

31 A. That's what's in that article, yes.

32 Q. And you know that's correct, don't you,

17787

1 Doctor?

2 A. Sir, the answer to that is no.

3 And the qualifying statements are that's  
4 based on information from a 1985 National Health  
5 Interview Survey. Once again, that information is  
6 almost outdated, if not outdated.

7 Q. Do you have any peer-reviewed article that  
8 contradicts this, Doctor?

9 A. That contradicts this particular statement?

10 Q. Yes.

11 A. An actual peer-reviewed article that I can  
12 give you right now?

13 Q. Yes.

14 A. No, I can't refer you to a specific article.

15 But my qualifying statements would say that  
16 as a treater of people that have nicotine addiction,  
17 that what I see in my clinical practice is not borne  
18 out by this statistic back in 1985.

19 Q. And what you see in your clinical practice  
20 are mainly people who are drug abusers, not people  
21 who are strictly seeking nicotine treatment;

22 correct?  
23 A. My practice includes people who suffer from  
24 addiction, multiple addictions, and nicotine  
25 addiction is one of them.  
26 Q. Now, Doctor, you know, don't you, that  
27 Ms. Scott formally began suing for smoking cessation  
28 relief in this case in 1996?  
29 A. Okay.  
30 Q. Do you know that?  
31 A. I have heard that, yes.  
32 Q. And when did she make her first attempt to  
17788

1 use any cessation plan?  
2 A. To use a cessation plan? I don't know  
3 specifically about a cessation plan.  
4 I know previous to 1996 there were some  
5 interventions made by a personal physician. There  
6 were -- there was a program that was set up on her  
7 job that talked about nicotine addiction and some  
8 ways of stopping the use of nicotine. That I know  
9 of, but --  
10 Q. When did -- I'm sorry.  
11 A. But when you say into a cessation program,  
12 I'm not aware of that.  
13 Q. When did you first see Gloria Scott?  
14 A. May of 2000.  
15 Q. Okay. And that's four years after this suit  
16 was filed?  
17 A. May of 2000, yes.  
18 Q. And she had not been to the Ochsner cessation  
19 program when you first saw her, had she?  
20 A. Not that I'm aware of.  
21 Q. In fact, she didn't go until after she had  
22 the first meeting with you?  
23 A. That's my understanding.  
24 Q. And she only went then because you were told  
25 by plaintiffs counsel not to see her again until she  
26 went into a smoking cessation program?  
27 A. I wouldn't -- I would have to disagree with  
28 that statement.  
29 Q. You disagree with that, all right.  
30 But at any rate, Gloria Scott quit smoking in  
31 September of 2000, did she not?  
32 A. Yes.

17789

1 Q. And she hasn't smoked since?  
2 A. No.  
3 Q. Now, Ms. Jackson also filed suit for smoking  
4 cessation help in 1996?  
5 A. Yes.  
6 Q. And again she didn't see you until four years  
7 later, in the year 2000?  
8 A. Yes, I first saw her in May of 2000.  
9 Q. Do smokers who are motivated to quit wait  
10 over four years to try to quit, Dr. LeBlanc?  
11 A. I can't answer that yes or no. I would have  
12 to qualify that based on my experience with the  
13 many, many, many, many class members that I have  
14 treated.  
15 Q. You can't answer that question?  
16 A. I can't answer that with a yes or a no  
17 without qualifying it based on my experience of  
18 treating a great deal of class members.



19 Q. In your experience, people don't quit until  
20 they are motivated, do they?  
21 A. They quit -- there is a number of factors  
22 that can lead to someone cessating initially. Now,  
23 those factors may well change as the cessation  
24 process continues.  
25 Q. Doctor, I want you to assume that a smoker  
26 testified that she knew cigarettes caused disease,  
27 but that she didn't want to quit smoking because she  
28 liked smoking.  
29 Would you agree that a smoker who said that  
30 is not motivated to quit?  
31 A. I wouldn't agree that that makes a statement  
32 about motivation. I think it speaks more loudly

17790

1 about the addiction itself.  
2 Q. You don't think it speaks to motivation at  
3 all?  
4 A. I didn't say at all. I said I think it  
5 speaks even more loudly about the whole process of  
6 addiction.  
7 It's very difficult to understand but  
8 nonetheless is real. What you are actually saying  
9 is somebody who knows the health consequences and  
10 then not only continues to smoke, but actually says  
11 I like to smoke, you have got to understand that  
12 even though you are talking about an adult, that  
13 that's a process, a behavior that's been going on  
14 since adolescence, if not childhood.  
15 And you have got to take all that into  
16 consideration when you look at a smoker or someone  
17 addicted to nicotine.  
18 Q. You would agree it reflects a lack of  
19 motivation to quit, don't you, Doctor?  
20 A. No, I don't agree.  
21 Q. You don't.  
22 Now, Doctor, you have a personal interest in  
23 seeing the plaintiffs prevail in this case, don't  
24 you?  
25 A. I don't know what you mean by personal  
26 interest.  
27 Q. Well, you consider yourself to be a member of  
28 this class, do you not?  
29 A. You asked me if I was a former smoker, and my  
30 answer was yes.  
31 Q. No, Doctor, my question is you consider  
32 yourself to be a member of the class?

17791

1 A. And when we looked at the definition, if I  
2 resume smoking and at that point I was concerned  
3 about disease and wanted to be -- wanted to once  
4 again stop smoking and wanted to be evaluated and  
5 treated for any disease, then, yes, I would be a  
6 member of the class.  
7 MR. WITTMANN:  
8 Your Honor, I move to strike.  
9 THE COURT:  
10 Overruled. Next question, please.  
11 MR. WITTMANN:  
12 All right.  
13 BY MR. WITTMANN:  
14 Q. Doctor, turn to your deposition, if you  
15 would, at page 288, the one of November 3rd, 2000.

16 A. Page again, sir?  
17 Q. 288, line 1.:  
18 Okay. All right. Now, do you  
19 consider yourself a member of this class?  
20 Answer: Yes.  
21 Do you recall having been asked that question  
22 and giving that answer at your deposition?  
23 A. I agree that I gave that answer in response  
24 to the last part of several questions that you asked  
25 me.  
26 Q. Thank you, Doctor.  
27 A. You are welcome.  
28 Q. Now, you believe as a former smoker you need  
29 certain of the tests that the plaintiffs are suing  
30 for in this case?  
31 A. I'm not smoking at this point, sir. I don't  
32 want to participate in a smoking cessation program,

17792

1 and I don't have any concerns at this point as to  
2 any health problems that may have developed as a  
3 result of my smoking over twelve years ago.  
4 Q. Again, can I refer you to your deposition,  
5 same page, page 288?  
6 Question at line 16: Do you  
7 think you need medical monitoring?  
8 Answer: Yeah, there is some  
9 tests based on my age and health situation  
10 that I need to have done.  
11 Do you recall having been asked that question  
12 and giving that answer?  
13 A. I recall giving that answer as a part of  
14 several questions that you asked me, yes, sir.  
15 Q. Has your opinion about your need for medical  
16 tests changed since your deposition?  
17 A. Well, no. But you asked me about being a  
18 class member.  
19 Q. No. My question, Doctor, if you could listen  
20 to it: Has your need for medical tests changed  
21 since the time you gave your deposition in the year  
22 2000?  
23 A. At this point I'm not smoking, and at this  
24 point I really don't have any concerns about any  
25 health issues as it relates to any problems that may  
26 have developed because of my smoking over twelve  
27 years ago.  
28 Q. So you now have no concerns about your  
29 medical condition?  
30 A. Not at this point I don't.  
31 Q. And that's changed from the time you gave  
32 your deposition in 2000?

17793

1 A. Well, the answer I gave you was in answer to  
2 several questions, so I don't want you to just take  
3 it out of context.  
4 But, no, I don't have any concerns now about  
5 my health as it relates to my former smoking.  
6 Q. Again, line 21, Doctor.  
7 A. Page, sir?  
8 Q. Same page.  
9 Do you believe that you need  
10 medical monitoring because you were a  
11 former smoker?  
12 Answer: Yes, sir.

13 Question: Okay. And what  
14 medical monitoring do you believe you  
15 need?  
16 Answer: Probably a stress test  
17 and probably pulmonary function tests.  
18 Do you recall having been asked those  
19 questions and giving those answers?  
20 A. Yes. But qualification: As part of the  
21 series of questions that you asked me. Yes, I  
22 remember giving you those responses.  
23 Q. Did any of those questions modify what you  
24 told me in those answers, Doctor?  
25 A. It may if you take it out of context. So we  
26 might have to read and get the flow of the questions  
27 at that point.  
28 Q. Would you like to read the entire page?  
29 A. I can take the time to do that?  
30 Q. You certainly may.  
31 A. And that's --  
32 Q. I will read it to you, question and answer.

17794

1 MR. CATES:  
2 Objection, Your Honor. May we  
3 approach?  
4 THE COURT:  
5 Yes.  
6 (At sidebar:)  
7 MR. CATES:  
8 Your Honor, respectfully, I think  
9 he's badgering this woman. He's taking  
10 these things out of context and he's  
11 repeating himself until he gets the answer  
12 he wants to. We did that all day  
13 yesterday.  
14 And she is trying desperately to  
15 answer yes or no and to explain it when  
16 necessary. He's testifying.  
17 THE COURT:  
18 Well, let me suggest to you that I  
19 disagree with that last statement you just  
20 made. She's never said she wants to  
21 explain her answer. She wants to give  
22 some background -- or she uses a different  
23 phrase.  
24 She has not yet in most instances  
25 said yes or no to a question.  
26 Mr. Wittmann says: Did I ask you that  
27 question and did you give that answer, and  
28 she makes a speech; okay? Now she wants  
29 to read the whole page.  
30 She's not responding properly. She  
31 can answer yes or no, and then she can  
32 explain.

17795

1 She's still giving speeches and she's  
2 delaying it, and he's not going to let her  
3 get away with it.  
4 MR. CATES:  
5 It's repetitive.  
6 THE COURT:  
7 It's being repetitive because he's  
8 not getting an answer to the question that  
9 I told her she had to give: Yes or no,

10 explain if you like to, or I'm sorry, I  
11 can't answer that question. Then we move  
12 along.  
13 MR. CATES:  
14 I understand.  
15 THE COURT:  
16 We are not going to be repetitive.  
17 We are not going to read the page.  
18 Objection overruled. Next question.  
19 If you want to say something, say it.  
20 MR. CARTER:  
21 I just want to know is it okay for  
22 Mr. Cates to talk to the witness to be  
23 sure that --  
24 MR. CATES:  
25 We will do it on the break.  
26 THE COURT:  
27 We are not going to break before  
28 lunch.  
29 But I have told her at least four  
30 times yesterday: Yes or no, and you may  
31 explain. I don't know what else to do.  
32 MR. CARTER:

17796

1 Thanks.  
2 (In open court:)  
3 BY MR. WITTMANN:  
4 Q. Doctor, when you gave your deposition back in  
5 November of 2000, you were under oath, were you not?  
6 A. Yes.  
7 Q. And when you told us you were a class member  
8 in this case, you believed that; correct?  
9 A. In response to some of the questions you  
10 asked, yes, I gave that answer.  
11 Q. And when you told us that you needed medical  
12 monitoring, you were being truthful with us at that  
13 time?  
14 A. At that point, that was the answer I gave to  
15 some of your questions, yes.  
16 Q. And so today you say you don't need medical  
17 monitoring; correct?  
18 A. Today I don't have any concerns about any  
19 health problems that may have arisen as a result of  
20 my smoking over twelve years ago.  
21 Q. So to answer my question, you don't need  
22 medical monitoring?  
23 A. At this point I don't have any concerns, so I  
24 don't have any need for medical monitoring.  
25 Q. Could I have an answer to the question,  
26 Doctor?

27 THE COURT:  
28 Doctor, I will remind you again the  
29 rules require that if you can answer a  
30 question with a yes or no, you must do  
31 that.  
32 If you would like to explain your

17797

1 answer, you may do that.  
2 If you are not able to answer the  
3 question, say I'm not able to answer the  
4 question.  
5 Ask the witness a question, please,  
6 Mr. Wittmann.

7 BY MR. WITTMANN:  
8 Q. Doctor, as you sit here today, you are  
9 telling this jury you don't need medical monitoring?  
10 A. No, I don't need medical monitoring at this  
11 point.  
12 Q. Thank you.  
13 Have you ever had a CT scan?  
14 A. I've had CT scans before.  
15 Q. A spiral CT scan to test for lung cancer?  
16 A. No, I have not had a spiral CT scan to test  
17 for lung cancer.  
18 Q. Have you ever taken an exercise stress test?  
19 A. Yes.  
20 Q. When did you do that?  
21 A. When I turned 40.  
22 Q. I won't ask you how long ago that was,  
23 Doctor.  
24 A. Thank you.  
25 Q. Have you ever had a pulmonary function test?  
26 A. I have had part of a pulmonary function test  
27 that takes place after surgery, but I've not had a  
28 formal pulmonary function test.  
29 Q. Doctor, the plaintiffs counsel in this case  
30 asked you to participate in a mock trial, did they  
31 not?  
32 A. Yes.

17798

1 Q. And when did that take place?  
2 A. A year or two -- maybe two years ago.  
3 Q. Okay. And during that mock trial you were  
4 asked questions by plaintiffs counsel and got  
5 critiqued on your answers; is that right?  
6 A. It's correct I was asked questions by  
7 plaintiffs counsel.  
8 Q. And did you answer them?  
9 A. I answered them.  
10 Q. And did attorneys give you feedback about  
11 your answers?  
12 A. Yes.  
13 Q. And they critiqued your answers?  
14 A. They gave me feedback about my answers. Yes,  
15 they critiqued my answers.  
16 Q. Okay. Now, Doctor, since you are a member of  
17 this class, you don't expect us to believe that you  
18 are a fair and impartial expert, do you?  
19 A. The answer to that is no, because I am not  
20 asking to participate in a tobacco cessation program  
21 at this point and I don't have any health concerns.  
22 Q. But you were a class member in 19 -- 2000  
23 when I took your deposition?  
24 A. In 19 -- in the year 2000 you asked me  
25 several questions and I gave you a response yes to  
26 some of those questions as it related to being a  
27 class member and having some health concerns.  
28 Q. You considered yourself a class member in the  
29 year 2000, did you not?  
30 A. Yes.

THE COURT:

That's repetitive, Mr. Wittmann. She

17799

1 answered that question several times.  
2 Next question, please.  
3 BY MR. WITTMANN:

4 Q. Do you know what bias means, Doctor?  
5 A. Yes.  
6 Q. You are biased in favor of the plaintiffs in  
7 this case because you were a plaintiff; correct?  
8 A. You are asking me a question?  
9 Q. I'm asking you a question.  
10 A. That is not correct, sir.  
11 Q. So you are not biased?  
12 A. I am not biased, sir.  
13 Q. Do you want your fellow class members to lose  
14 this case, Doctor?  
15 A. Well, because -- the answer to that is I  
16 can't give a yes or no answer because I'm not a  
17 member of the class, and I --  
18 Q. I said fellow class members.  
19 THE COURT:  
20 Mr. Wittmann, allow the witness to  
21 answer completely and don't interrupt her,  
22 please.  
23 MR. WITTMANN:  
24 I'm sorry, Your Honor.  
25 THE COURT:  
26 Doctor, this is the question that you  
27 didn't have an opportunity to answer: Do  
28 you want your fellow class members to lose  
29 this case, Doctor?  
30 A. And my answer to that is I can't give a yes  
31 or no answer. What I can say is I am not a member  
32 of the class.

17800

1 MR. WITTMANN:  
2 Your Honor, I would move to strike  
3 everything after she said she can't --  
4 THE COURT:  
5 The answer has been sufficiently  
6 given. Next question, please,  
7 Mr. Wittmann.  
8 BY MR. WITTMANN:  
9 Q. So you can't say as you sit here whether you  
10 do or do not want the class members in this case to  
11 win; is that correct?  
12 THE COURT:  
13 She answered that question. She said  
14 she was unable to answer that question  
15 with a yes or no.  
16 Next question please, Mr. Wittmann.  
17 MR. WITTMANN:  
18 Your Honor, I have no further  
19 questions. Thank you very much.  
20 THE COURT:  
21 Any other cross-examination of this  
22 witness?  
23 MR. SCHNEIDER:  
24 To make a proffer, Your Honor.  
25 THE COURT:  
26 Well, we don't do that in front of  
27 the jury.  
28 But any questions on cross-  
29 examination of this witness by any defense  
30 counsel?  
31 Redirect, Mr. Cates?  
32 MR. CATES:

17801

1 Thank you, Your Honor.

2 -- -- --

3 REDIRECT EXAMINATION

4 BY MR. CATES:

5 Q. Dr. LeBlanc, for an extended period of time  
6 yesterday and also this morning, you were asked a  
7 series of questions about a class definition, as  
8 late as five minutes ago.

9 Did you have any hand in preparing that class  
10 definition?

11 A. No, sir.

12 Q. You are not an attorney here today?

13 A. No, sir.

14 Q. You are here as a physician here today?

15 A. Yes, sir.

16 Q. In fact, on yesterday, we went back and forth  
17 for a considerable period of time regarding whether  
18 or not you understood that the word habit was in  
19 that class definition. Do you remember that?

20 A. I remember the discussion, yes.

21 Q. And do you remember I think Mr. Wittmann  
22 thought it wasn't in, you thought it was in, and --  
23 strike that.

24 Do you recall that you were correct that  
25 habit was in that definition?

26 A. I recall that habit was in that definition,  
27 yes.

28 Q. Mr. Wittmann then on yesterday asked a series  
29 of hypothetical questions regarding class membership  
30 of an individual who smoked a pack -- one pack of  
31 cigarettes more than twenty years ago. Do you  
32 remember that question?

17802

1 A. Yes.

2 Q. Can you think of any reason as you sit here  
3 today as a clinical psychiatrist with an emphasis on  
4 addiction regarding why someone who smoked one pack  
5 of cigarettes twenty years ago or more than twenty  
6 years ago and hasn't smoked since would want or need  
7 cessation if they weren't still smoking?

8 A. No. Not only do I not see why someone would  
9 want to be a member of the class, but it just  
10 doesn't play out in the class members that I treat.  
11 That is not typical nor common in the class members  
12 that I have treated over the years.

13 Q. Do the class members that you treat typically  
14 still smoke?

15 A. Oh, yes. They are active in their addiction.

16 Q. Do the class members that you treat want to  
17 stop smoking typically?

18 A. Yes. The vast, vast majority of people that  
19 I treat will come into my office and say just that:  
20 I want to stop smoking.

21 Q. Why would someone who hasn't smoked in twenty  
22 years want to participate in some cessation program  
23 from your experience?

24 A. I really can't answer that. I can only  
25 answer what I know in terms of the hundred of class  
26 members that I have treated, and that just has not  
27 come up.

28 Q. And I think you said on yesterday you  
29 currently are responsible for more than five hundred  
30 patients?

31 A. Well more than five hundred patients.  
32 Q. And that doesn't come up with those patients  
17803  
1 that you treat that are members of this class in  
2 this state?  
3 A. Nor has it come up over the years when I was  
4 responsible for many more patients than the ones I  
5 have now.  
6 Q. Dr. LeBlanc, were you also asked a number of  
7 questions about your depositions in this matter?  
8 A. Yes.  
9 Q. When were these depositions taken?  
10 A. The one deposition that was referred to the  
11 most --  
12 Q. Deposition, deposition.  
13 A. Deposition was taken in November of 2000.  
14 Q. And were you deposed on another occasion?  
15 A. Yes.  
16 Q. Do you remember the length of time those  
17 depositions took?  
18 A. The deposition in --  
19 MR. WITTMANN:  
20 Objection, Your Honor. Relevance.  
21 THE COURT:  
22 Overruled. Answer the question, if  
23 you are able to.  
24 MR. CATES:  
25 Thank you, Your Honor.  
26 A. The deposition in 2000 took over seven  
27 hours. And the deposition in 2002, I recall three  
28 to four hours maybe.  
29 Q. Do you recall how many pages those  
30 transcripts consisted of regarding your testimony  
31 over that extended period of time, several years ago?  
32 A. I don't remember for 2002, although it's here  
17804

1 if you need me to give you an answer.  
2 But for the deposition I made reference to  
3 this morning, it looks like almost three hundred  
4 pages.  
5 Q. Did you memorize that before you came to  
6 Court today?  
7 A. No, sir.  
8 Q. Dr. LeBlanc, when you gave those depositions  
9 under oath several years ago, were they based upon  
10 knowledge and information and experience that you  
11 had at that time?  
12 A. Yes. And can I qualify that?  
13 Q. Certainly.  
14 A. The attorney made reference to my saying that  
15 DSM IV was the Bible, and I feel that that needs to  
16 be explained. I did make that statement as it  
17 related to making diagnosis --  
18 MR. WITTMANN:  
19 Objection, Your Honor. May we  
20 approach?  
21 THE COURT:  
22 You may approach.  
23 (At sidebar:)  
24 MR. WITTMANN:  
25 He's asking a question, and she's now  
26 about to make a speech again.  
27 THE COURT:



28                   It's certainly not responsive to the  
29 question, Mr. Cates.  
30                   MR. CATES:  
31                   I understand.  
32                   THE COURT:

17805

1                   Ask her another question.  
2                   (In open court:)  
3                   THE COURT:  
4                   Next question, please, Mr. Cates.  
5                   MR. CATES:  
6                   Thank you, Your Honor.

7 BY MR. CATES:

8 Q.       Dr. LeBlanc, did you do your best at the time  
9 of those depositions to answer those questions  
10 accurately and truthfully and completely?

11 A.       Yes. This is a very serious matter, and I  
12 have done my best, as always, as it relates to this  
13 case.

14 Q.       When you testified on yesterday and today,  
15 you realize that you were under oath, and have you  
16 made a conscious effort to answer those questions on  
17 yesterday and today truthfully and to the best of  
18 your ability based on over 19 years as a clinical  
19 psychiatrist treating members of this class?

20                   MR. GAY:  
21                   Objection, repetitious.

22                   THE COURT:  
23                   Overruled. Answer the question, if  
24 you are able to.

25                   MR. CATES:  
26                   Thank you.

27 A.       It doesn't take an effort, sir. When you  
28 have faith, when you have been trained, when you  
29 have got experience and when what you do works, you  
30 don't have to put forth effort to answer questions.  
31 You just tell based on your faith, your knowledge,  
32 your training and what you do.

17806

1 Q.       Dr. LeBlanc, since you brought up faith and  
2 training and effort, has anything that any of the --  
3 strike that.

4                   Has anything that Mr. Wittmann shown you on  
5 yesterday or today change your opinions or  
6 conclusions regarding what you have done in  
7 connection with this case?

8 A.       No, with qualification.

9                   Across the board, the information that was  
10 presented in this Court is outdated. When you look  
11 at those statistics come from the '80s, when you  
12 look at even DSM IV, the cutoff for research for  
13 DSM IV was 1992.

14 Q.       Dr. LeBlanc, has anything that has been shown  
15 to you on this screen yesterday or today changed any  
16 of your opinions regarding your opinions that class  
17 members in this case from your experience need  
18 cessation programs to help them quit smoking?

19 A.       My opinion -- no, my opinion has not  
20 changed. Class members need cessation -- formal  
21 cessation, not informal cessation -- and they need  
22 medical monitoring to help them face serious health  
23 consequences and possible death.

24                   MR. WITTMANN:

25                   Objection, Your Honor.  
26                   THE COURT:  
27                   Sustained. The last portion of that  
28                   question will be stricken -- the last  
29                   portion of the answer, rather, the portion  
30                   that reads, "and they need medical  
31                   monitoring to help them face serious  
32                   health consequences and possible death,"

17807

1                   will be stricken. It was not responsive  
2                   to the question.

3                   Next question, please.

4 BY MR. CATES:

5 Q.       Is it fair to state that your opinions  
6 haven't changed, Dr. LeBlanc?

7 A.       That is true. My opinions have not changed.

8 Q.       Did any one of these plaintiffs lawyers that  
9 are involved in this case tell you what to say  
10 today?

11 A.      No, sir. Not anymore.

12 Q.      You don't work that way, do you?

13 A.      Never did.

14           MR. CATES:

15           I don't have any further questions,

16           Your Honor.

17           Thank you, Dr. LeBlanc.

18           Thank you, ladies and gentlemen.

19           THE COURT:

20           Step down, Doctor.

21           THE WITNESS:

22           Thank you.

23           THE COURT:

24           Counsel approach the bench, please.

25           (At sidebar:)

26           THE COURT:

27           Is it your plan or -- strike that.

28           Is that your last witness on  
29 plaintiffs' case in chief, Mr. Herman?

30           MR. RUSS HERMAN:

31           Yes.

32           THE COURT:

17808

1                   You indicated earlier that you had  
2                   some things that you wanted to do or say  
3                   after the last witness testified in your  
4                   case in chief. Are you ready to do that  
5                   now?

6                   MR. RUSS HERMAN:

7                   Yes, I am.

8                   THE COURT:

9                   All right. I intend to tell the  
10                   jurors we are going to recess until  
11                   probably -- we are going to recess for  
12                   lunch until 1:00 and see where we are  
13                   going; okay?

14                   MR. WITTMANN:

15                   Okay.

16                   MR. RUSS HERMAN:

17                   Judge, do you want me to make that  
18                   statement now?

19                   THE COURT:

20                   No.

21                   MR. RUSS HERMAN:

22 Okay.  
23 (In open court:)  
24 THE COURT:  
25 We are going to start our luncheon  
26 recess a little early today. We are going  
27 to recess until 1:00. 1:00. 1:00.  
28 And you will all be here and ready to  
29 go at 1:00 promptly? Thank you very  
30 much. See you at 1:00.  
31 (In open court without a jury  
32 present:)

17809

1 THE COURT:  
2 Let the record reflect the jury has  
3 left the courtroom.  
4 Anything for the record by plaintiffs  
5 counsel, Mr. Herman?  
6 MR. RUSS HERMAN:  
7 I have to step up. I couldn't hear  
8 back there, Judge.  
9 THE COURT:  
10 The jury has left the courtroom.  
11 Anything for the record by plaintiffs  
12 counsel?  
13 MR. RUSS HERMAN:  
14 Not at this time, Your Honor.  
15 THE COURT:  
16 Defense counsel?  
17 MR. SCHNEIDER:  
18 Your Honor, I want to make a brief  
19 proffer of the cross-examination of  
20 Dr. LeBlanc relating to Your Honor's  
21 ruling, just briefly.  
22 THE COURT:  
23 All right. Make your proffer,  
24 please.  
25 MR. SCHNEIDER:  
26 Your Honor ruled there would be no  
27 testimony concerning the reasons for  
28 smoking by Deania Jackson and  
29 Gloria Scott, which is a topic addressed  
30 in detail in the expert reports of  
31 Dr. LeBlanc entitled Psychiatric Report on  
32 Gloria Scott, Psychiatric Report on Deania

17810

1 Jackson.  
2 But for Your Honor's ruling  
3 restricting testimony on that point, we  
4 would have conducted cross-examination on  
5 the reasons that Deania Jackson and  
6 Gloria Scott smoked, their admissions that  
7 they have made on the points on that in  
8 Dr. LeBlanc's session notes, and  
9 challenged her credibility based upon  
10 statements made by the plaintiffs, Deania  
11 Jackson and Gloria Scott, on the reasons  
12 that they smoked and the effect of  
13 nicotine on them.  
14 And I wanted to make that proffer for  
15 the record.  
16 MR. RUSS HERMAN:  
17 Your Honor, cross-proffer?  
18 THE COURT:

19 I understand that. And for the  
20 record, my rulings were based upon the  
21 Louisiana Supreme Court's latest opinion  
22 in this case defining the issues that were  
23 before this jury and eliminating  
24 individual issues and limiting this phase  
25 to class-wide issues and on fault and  
26 liability by the defendants. That's the  
27 reason for my ruling.

28 Mr. Herman?

29 MR. RUSS HERMAN:

30 Cross-proffer: We stand on the  
31 Supreme Court opinion and Your Honor's  
32 prior rulings and the briefings we have

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1 submitted previously.

2 THE COURT:

3 Mr. Herman, anything else by the  
4 plaintiffs?

5 MR. RUSS HERMAN:

6 Not at this time, Your Honor.

7 THE COURT:

8 Well, it's time to do whatever you  
9 intend to do. I understand that you  
10 have -- or you informed the Court --

11 MR. RUSS HERMAN:

12 I can't do that --

13 THE COURT:

14 -- you have no further witnesses.

15 MR. RUSS HERMAN:

16 That's why I asked whether I should  
17 do it before the jury left.

18 My statement would have been before  
19 the jury, Your Honor, at this time  
20 plaintiffs will not call any more  
21 witnesses to the stand in their case in  
22 chief or read any more documents to the  
23 jury at this time, and we intend to rest  
24 after some other matters are ruled on and  
25 subject to rebuttal.

26 That would have been my statement.  
27 I'm willing to make it right now just as I  
28 have made it.

29 THE COURT:

30 I will allow you to make that  
31 statement that plaintiffs rest or intend  
32 to call no more witnesses when the jury

17812

1 returns after the luncheon recess.

2 But if you want to take up the other  
3 matters that you wish to attempt to get  
4 into evidence or do anything else and you  
5 are ready to do it now, I will entertain  
6 it.

7 MR. RUSS HERMAN:

8 Yes, sir.

9 We have submitted to defense counsel,  
10 to Special Master and Your Honor a list of  
11 documents which were ruled on by the  
12 Special Master as not privileged which  
13 have yet to be ruled on by Your Honor. We  
14 would like to get those in evidence before  
15 we rest.

16           There are four journal articles I'm  
17       advised that we would like to get in  
18       evidence before we rest.

19           Other than that, we have no  
20       outstanding issues.

21           Just so that Your Honor is alerted,  
22       and we will be back at 1:00 as Your Honor  
23       has directed, we do not think it is  
24       possible to get a reply brief in on  
25       directed verdict, have deposition hearings  
26       and prepare for witnesses under cross next  
27       week and assemble all the cross documents  
28       and serve them all in this compressed time  
29       period.

30           I thought that, as I'm sure everybody  
31       did, that this case would have ended  
32       yesterday at the latest.

17813

1           I understand the problems. We have  
2       had problems for ten weeks now flying  
3       witnesses in and out, across the country,  
4       interrupting their testimony, et cetera,  
5       et cetera, and I believe there is going to  
6       be a series scheduling problem.

7           We filed a motion yesterday which is  
8       yet to be heard or set that says we have  
9       been under we believe a matter that Your  
10       Honor has exercised discretion on where  
11       these guys -- excuse me, these gentlemen  
12       and ladies have had at least four or five  
13       people prepare for cross-examination of a  
14       single witness and at least some of them  
15       sometimes cross-examined with all four  
16       lawyers.

17           We can only assign one lawyer to  
18       prepare a cross.

19           It's a lot easier for them and they  
20       have a serious advantage on the 48-hour  
21       rule because with respect to us, we have  
22       got one lawyer who has got to go through  
23       everything within forty-eight hours to  
24       prepare a cross, and they have got four  
25       different people they can assign to four  
26       different areas if they choose, and we  
27       have been severely limited.

28           Our motion, which we ask Your Honor  
29       to consider, is either allow us one more  
30       member for nonrepetitive cross, or to  
31       require that instead of forty-eight hours'  
32       notice, we get more than forty-eight hours'

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1       notice so that the single member of our  
2       group who is assigned to cross-examination  
3       will have sufficient time to prepare  
4       without being disadvantaged.

5           I understand this matter is entirely  
6       within Your Honor's discretion. I don't  
7       ask for a ruling now, but I will ask Your  
8       Honor to please consider the issue.

9       THE COURT:

10           I have the motion. I don't have a  
11       response from the defendants. I suppose I  
12       will get one before very long.

13 MR. WITTMANN:  
14 Yes, Your Honor, we will respond.  
15 THE COURT:  
16 And I will see where the points of  
17 difference are and, if necessary, I will  
18 have a ruling or a hearing.  
19 MR. RUSS HERMAN:  
20 Yes, Your Honor.  
21 Just one other comment that  
22 Mr. Bailey reminds me, and that is because  
23 still of the large number of witnesses in  
24 the defendants' case on both the will  
25 call, the may call, and now an extended  
26 deposition cut list, it compounds our  
27 problems in terms of preparation. And I  
28 just wanted to state that.  
29 MR. WITTMANN:  
30 I would just point out they had five  
31 hundred witnesses on their list, but  
32 that's --

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1 THE COURT:  
2 The tentative schedule that I have  
3 talked to counsel about is a Wednesday,  
4 today, 3:00 p.m. deadline for defendants'  
5 posttrial memorandums.

6 And if I recall correctly, Mr. Long  
7 indicated earlier today that you could  
8 meet that schedule?

9 MR. LONG:  
10 Yes.

11 THE COURT:  
12 Okay. Mr. Herman, I have given the  
13 plaintiffs until 4:00 p.m. on Friday to  
14 respond. Are you telling me that's not  
15 doable?

16 MR. RUSS HERMAN:  
17 I'm saying that -- no, I'm not going  
18 to tell you that that's not doable because  
19 since Your Honor issued that ruling, we  
20 have been trying to anticipate and we have  
21 had people working on it. So I'm not  
22 going to say that.

23 What I am going to say is we can't go  
24 through a depo hearing, get our brief in,  
25 prepare for oral argument, and prepare for  
26 two or three witnesses next week within  
27 this compressed time frame. We just don't  
28 have unfortunately the ability to do that.

29 THE COURT:  
30 Do the plaintiffs' side have the  
31 defendants' witness plan for next week at  
32 this point?

17816

1 MR. RUSS HERMAN:  
2 We have been told there are two to  
3 four witnesses next week, Spagnola and  
4 Eiswirth, Louria, and there was one other  
5 name.

6 THE COURT:  
7 Mr. Long?

8 MR. LONG:  
9 Early this morning before we started

10 when we were up at your bench, I started  
11 to tell the plaintiffs who the three  
12 definites are for next week, but nobody  
13 seemed interested at the time.

14 But they are Spagnola, followed by  
15 Eiswirth, followed by Viscusi. Those are  
16 the three witnesses, time available, we  
17 will call next week.

18 MR. RUSS HERMAN:

19 Viscusi wasn't even on the will call  
20 list the last time.

21 So I don't know how we are  
22 expected -- well, I know, Mr. Belasic,  
23 it's not a problem for you.

24 I'm advising the Court it is a  
25 problem for us, just as it was a problem  
26 that we had to send Dr. Burns back, we  
27 couldn't do anything in the interim, and  
28 then we had to fly him back in. Just so  
29 you will know, he came back seven times.

30 These problems happen. We had to get  
31 Arnett back and forth. We had to get  
32 Jaffe back and forth.

17817

1 I'm advising the Court in advance  
2 that we have a problem, that's all.

3 THE COURT:

4 I would like to hear the arguments on  
5 the posttrial motions on Monday, April 7,  
6 at 9:00.

7 And I have yet to set any deposition  
8 hearings on the designations, but I'm  
9 going to require -- you may want to write  
10 this down -- I'm going to require the  
11 defendants to file with the Special Master  
12 and inform the plaintiffs of all their  
13 designations on the list of depositions  
14 that I received this morning by Friday  
15 noon. Friday noon. Friday noon.

16 And after that is done, the  
17 plaintiffs will have an opportunity to  
18 counterdesignate.

19 MR. MUEHLBERGER:

20 Your Honor, may I clarify?

21 We have already filed our  
22 designations a year and a half ago.  
23 Plaintiffs counterdesignated a year and  
24 half ago. There is no new work to do.

25 THE COURT:

26 Well, Mr. Muehlberger, we had a  
27 conversation this morning, and I  
28 specifically if these were new  
29 designations and new depositions, and my  
30 impression from the discussion was that  
31 the answer to that question was yes.

32 MR. MUEHLBERGER:

17818

1 I'm sorry, Your Honor.

2 THE COURT:

3 Which is why I was a little bit out  
4 of sorts with the answer.

5 Now, if the answer to that question  
6 is no, then you don't have anything to

7 give to the defendants --  
8 MR. MUEHLBERGER:  
9 Right.  
10 THE COURT:  
11 I mean to plaintiffs counsel in terms  
12 of designations; is that correct?  
13 MR. MUEHLBERGER:  
14 Yes, Your Honor.  
15 May I try to explain, very briefly?  
16 THE COURT:  
17 Please, please. Let's take a  
18 deposition that I spent some hours ruling  
19 on earlier, and how about Mr. Teague,  
20 Dr. Teague?  
21 Did we not do Dr. Teague's  
22 deposition, Mr. Muehlberger?  
23 MR. BOYCE:  
24 I will address Dr. Teague. I did  
25 Dr. Teague.  
26 THE COURT:  
27 Now, Dr. Teague's deposition is  
28 listed here, Dr. Teague's deposition has  
29 not been played that I'm aware of in the  
30 plaintiffs' side.  
31 What is there to do with regard to  
32 Dr. Teague's deposition for the

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1 defendants' case as of today?  
2 MR. BOYCE:  
3 Dr. Teague is one of the witnesses  
4 for whom each side made affirmative  
5 designations. The plaintiffs made  
6 affirmative designations, we countered,  
7 and they counter-counter. Those were  
8 the arguments Your Honor heard last  
9 winter.  
10 The defendants also filed affirmative  
11 designations for Dr. Teague to which the  
12 plaintiffs countered and we counter-  
13 countered.  
14 THE COURT:  
15 Same depositions?  
16 MR. BOYCE:  
17 Mostly from the same depositions.  
18 When we had the hearings, we offered  
19 to argue all the designations at once,  
20 their affirmative designations as well as  
21 our affirmative designations.  
22 Plaintiffs didn't want to do that at  
23 the time for reasons that were  
24 understandable.  
25 What is left to be argued now are the  
26 defendants' affirmative designations and  
27 the plaintiffs' counters.

28 THE COURT:  
29 To what extent do the defendants'  
30 affirmative designations at this point  
31 incorporate or designate new language,  
32 that is, new questions and answers in that

17820

1 deposition that I have never ruled on, if  
2 you can tell me?

3 MR. BOYCE:



4           There are some areas that we did not  
5 address in the past. There are new --  
6 they were our affirmative designations,  
7 they were materials that we thought we  
8 would play in our case.

9           THE COURT:

10          That are different than your  
11 counterdesignations to plaintiffs?

12          MR. BOYCE:

13          Yes. We tried to keep our  
14 counterdesignations for the most part  
15 limited to the plaintiffs' affirmative  
16 designations.

17          But if there was something else in  
18 that deposition that we thought we might  
19 play in our case, we listed it as an  
20 affirmative designations.

21          Our designations were due on the same  
22 day, so it was hard for us to anticipate  
23 what the plaintiffs would do such that we  
24 could wait and make our designations or  
25 our counterdesignations.

26          THE COURT:

27          So are you telling me now that the  
28 plaintiffs' side has received the  
29 defendants' affirmative designations in  
30 these 18 depositions sometime in the  
31 past?

32          MR. BOYCE:

17821

1          Yes, sir. I can only speak for the  
2 Reynolds witnesses, but, yes, all of our  
3 designations were filed years ago.

4           THE COURT:

5          Is that true with regard to all  
6 defendants?

7          MR. BOYCE:

8          With one exception. Dr. Leonard  
9 Hudzinski is the only exception on that  
10 issue.

11          MR. MICHAEL GERTLER:

12          We have a problem with Fisher, Your  
13 Honor, not to interrupt. I don't think  
14 that's anywhere near ready to be played  
15 because we originally started with  
16 designations, Your Honor, that you asked  
17 us to try to work together and pare down,  
18 and we never got there.

19          And as you know, it was never  
20 played. So we are back to square one with  
21 Dr. Fisher.

22          THE COURT:

23          Is there any quarrel from plaintiffs  
24 counsel with the statement that  
25 Mr. Muehlberger has made, that you have  
26 had the affirmative designations for some  
27 period of time?

28          MR. RUSS HERMAN:

29          Yes, Your Honor.

30          The Teague deposition and the Rodgman  
31 depositions, as I recall, with all  
32 designations and counterdesignations, were

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1 four to six hours long apiece.

2 We asked the defendants, particularly  
3 R. J. Reynolds, to please look at them to  
4 see if they could be reduced, and they  
5 said no.

6 As a result, there are some un --  
7 there are parts of those depositions  
8 which, as far as we know, still need to be  
9 looked at because the defendants have  
10 never settled on what it is that they are  
11 really designating; okay?

12 With regard to others on that list,  
13 LeVan, Johnston and the Philip Morris  
14 designees, I know that we submitted in  
15 those -- and Levy, and Bonhomme who they  
16 have now listed today, Merlo, we have  
17 submitted some time ago designations.

18 Some of those were not ruled on. For  
19 example, in Levy, they still objected to  
20 one exhibit and, since they objected to  
21 it, we elected, since it hadn't been ruled  
22 on, to play Levy.

23 Now, what new things they are  
24 designating, I don't know. I had  
25 understood at the bench conference and the  
26 record will reflect that Mr. Copley said  
27 that there were new things that they had  
28 designated, and I said I don't think we  
29 are going to have to redesignate.

30 And maybe I'm in error about that,  
31 but I do not agree with the position that  
32 R. J. Reynolds is taking with regard to

17823

1 these depositions.

2 THE COURT:

3 We are going to attempt to resolve it  
4 this way, and I'm going to give you some  
5 notice so you will be prepared.

6 When the jury is discharged for the  
7 day today, counsel will be required to  
8 confer with Special Master Gianna to  
9 delineate and try to define what needs to  
10 be ruled on by me, and hopefully the order  
11 in which these depositions might be  
12 presented, if this letter doesn't contain  
13 the order -- and if it does, you can tell  
14 us that now -- and how best we can  
15 approach trying to -- trying to determine  
16 what's already been ruled on and what has  
17 yet to be ruled on in all these  
18 depositions, and then talk about  
19 scheduling.

20 Mr. Long tells me that he has  
21 witnesses scheduled for Monday, April 7;  
22 that is correct, Mr. Long?

23 MR. LONG:

24 Yes, sir.

25 THE COURT:

26 Will you be able to start by  
27 11:00 a.m. if we have the hearings on the  
28 motions at 9:00?

29 MR. LONG:

30 What I wanted to mention this morning

31 is we would prefer to, not knowing when  
32 the hearings will stop, start at 1:00.

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1 Rather than have the witness come over and  
2 wait, just start at 1:00.

3 That way, we may lose thirty minutes  
4 that day, but it's a definite start time  
5 that I can have the witness here.

6 THE COURT:

7 I will consider that.

8 Mr. Herman, on your wrap-up issues,  
9 is it your position that you want to deal  
10 with these documents that the  
11 Special Master has ruled on before you  
12 technically rest?

13 MR. RUSS HERMAN:

14 Unless they will stipulate or we can  
15 reach something that will hold up on  
16 appeal that Your Honor can schedule those  
17 after we rest.

18 But we would like them before the  
19 depo cuts so that we may use whatever Your  
20 Honor has ruled in cross-examination.

21 THE COURT:

22 If a stipulation can be reached to  
23 allow you to present those issues after  
24 you make the statement "Plaintiffs rest,"  
25 I think that's sufficient.

26 But I think you need to first find  
27 out if you can get that agreement before  
28 we --

29 MR. RUSS HERMAN:

30 I asked Mr. Long to check with his  
31 people.

32 MR. WITTMANN:

17825

1 That's fine with us, Judge.

2 THE COURT:

3 That's as to all defendants,  
4 Mr. Wittmann?

5 MR. WITTMANN:

6 Yes.

7 MR. RUSS HERMAN:

8 So it's stipulated between plaintiffs  
9 and defendants that after plaintiffs rest,  
10 the Court will determine the privilege  
11 rulings that the Court has not yet  
12 determined, plaintiffs may then introduce  
13 those documents into plaintiffs' side of  
14 the case and utilize them in cross-  
15 examination.

16 THE COURT:

17 You also made mention of I think you  
18 said journal articles, if I wrote it down  
19 correctly.

20 MR. RUSS HERMAN:

21 Four journal articles that I'm  
22 advised of have not been ruled on.

23 THE COURT:

24 Are they under advisement at this  
25 point?

26 MR. LEGER:

27 They are, Your Honor.

28 THE COURT:  
29 So they have been offered but not  
30 ruled on.  
31 MR. LEGER:  
32 They were offered last week in a  
17826  
1 hearing, and Your Honor hasn't ruled on  
2 those.  
3 THE COURT:  
4 If that ruling can be included in  
5 that stipulation.  
6 MR. RUSS HERMAN:  
7 Wait a minute. I want to make sure  
8 that the stipulation is on the record, it  
9 will be bind everybody through any appeals  
10 or writs. Is that your understanding?  
11 MR. WITTMANN:  
12 That's my understanding, limited to  
13 the documents on the list you gave us this  
14 morning dated April the 2nd, 2003.  
15 MR. LEGER:  
16 And the five JAMA articles that the  
17 Court has under advisement at this time  
18 that we argued last week on youth  
19 targeting.  
20 THE COURT:  
21 Mr. Wittmann, I have two sheets of  
22 paper with that date on it. You have only  
23 got one in your hands.  
24 MR. WITTMANN:  
25 That's correct.  
26 THE COURT:  
27 Let's be clear about it. I have got  
28 one sheet that starts -- it's two columns  
29 and the first number is 18 on the top of  
30 the left, and the second sheet is almost  
31 two full columns and the top number on the  
32 left-hand column is 258.  
17827  
1 Which one do you have?  
2 MR. WITTMANN:  
3 Just the 258.  
4 MR. LONG:  
5 I think there is one sustained and  
6 one overruled; isn't that correct?  
7 THE COURT:  
8 The April 2 list that starts with  
9 No. 18 is Judge Ganucheau has not ruled on  
10 these exhibits, dash, privilege, sustained  
11 by Special Master Gianna.  
12 So apparently Gianna says they are  
13 privileged.  
14 MR. RUSS HERMAN:  
15 And we are not contesting those.  
16 THE COURT:  
17 So there is nothing to rule on?  
18 MR. RUSS HERMAN:  
19 We are not appealing whatever  
20 Mr. Gianna has ruled on.  
21 THE COURT:  
22 Then you are right, Mr. Wittmann.  
23 There is one list dated April 2, and the  
24 first number on the top left-hand column

25 is 258.  
26 MR. WITTMANN:  
27 That's correct. Those are the  
28 documents.  
29 THE COURT:  
30 And that's the group of exhibits  
31 Mr. Herman refers to in his attempted  
32 stipulation.

17828

1 MR. WITTMANN:  
2 That's my understanding.  
3 THE COURT:  
4 And then Mr. Leger has indicated that  
5 there are four --  
6 MR. LEGER:  
7 Actually five.  
8 THE COURT:  
9 Five Wall Street Journal articles?  
10 MR. LEGER:  
11 No, Journal of the American Medical  
12 Association articles.  
13 THE COURT:  
14 That I have heard argument on but  
15 have taken under advisement. And the  
16 exhibit numbers are --  
17 MR. LEGER:  
18 The exhibit numbers are 0225.01,  
19 0230.01, 3723.01, 4642.01 and 4478.01,  
20 Your Honor.  
21 THE COURT:  
22 And part of the stipulation is that I  
23 will issue a ruling on the admissibility  
24 of those documents and they will be  
25 included, if admitted, in plaintiffs' case.  
26 MR. WITTMANN:  
27 That's the stipulation, yes, Your  
28 Honor.  
29 THE COURT:  
30 All right.  
31 MR. LOUIS GERTLER:  
32 Your Honor, there are also two B&W

17829

1 documents you took under advisement as  
2 well yesterday, Scott Plaintiffs' Exhibit  
3 2428 and 2042.  
4 THE COURT:  
5 Yes, I recall that I did take two of  
6 those under advisement and I haven't ruled  
7 on them.  
8 And Mr. Schneider, you are --  
9 MR. SCHNEIDER:  
10 Yes, Your Honor, I said that I would  
11 endeavor to find out on Exhibit 2428 who  
12 Mr. Crawford was.  
13 And the information that I have is  
14 Mr. Crawford was the chairman of IMASCO, a  
15 company located in Canada.  
16 And on Exhibit 2042, I said that I  
17 would look into who M. Oldman was.  
18 What I learned about him is that he  
19 was a psychologist at the University of  
20 Southampton in England. He was a  
21 consultant to BATCO is the best I was able

22 to discover.  
23 So I put that information in the  
24 record.  
25 THE COURT:  
26 And the name of the gentleman who was  
27 with IMASCO in 2428?  
28 MR. SCHNEIDER:  
29 Crawford. Mr. Crawford.  
30 THE COURT:  
31 Crawford.  
32 I think the requested stipulation is  
17830

1 you allow me to rule on those two  
2 documents that I have under advisement at  
3 this point, together with all of the other  
4 documents we have been talking about.

5 MR. SCHNEIDER:  
6 Yes, I understand that, Your Honor.  
7 And yes, I am agreeable to that.  
8 We pointed out those individuals were  
9 one from Canada, one from BATCO, and that  
10 was the information Your Honor needed to  
11 rule on the objections I made.  
12 So I'm agreeable to your ruling on  
13 that.

14 THE COURT:  
15 And on the issues, the April 2 list  
16 starting with 258, I presume I can rule on  
17 what's already been submitted without  
18 argument?

19 MR. WITTMANN:  
20 I think that's correct.

21 MR. SCHNEIDER:  
22 No.

23 MR. WITTMANN:  
24 I stand corrected.

25 MR. SCHNEIDER:  
26 On these privileged documents, Your  
27 Honor, where the Special Master overruled  
28 our privilege objections, we need to have  
29 a hearing before Your Honor on those, each  
30 of those documents as we did with  
31 individual ones that already came up, and  
32 then we need to have the opportunity to

17831

1 assert objections beyond privilege.  
2 So it could take some period of  
3 time. That's why we are stipulating with  
4 the plaintiffs and agreeing to in effect  
5 let them rest.

6 THE COURT:  
7 So that can be put off. We don't  
8 have to do that immediately.  
9 Do you need those before the defense  
10 case opens?

11 MR. RUSS HERMAN:  
12 I need those before their witness  
13 goes on for cross-examination purposes.

14 THE COURT:  
15 Well, then we have got until Monday  
16 at 1:00 to do that.

17 MR. RUSS HERMAN:  
18 Yes, sir. We will be ready.

19 MR. LONG:  
20 Your Honor, our first two witnesses  
21 are medical monitoring witnesses. What  
22 use could they possibly make of the  
23 privileged documents with those two  
24 people?  
25 THE COURT:  
26 Well, I don't know. I don't know  
27 what Mr. Herman's case is about and I  
28 don't know what these documents say. But  
29 you all will have an hour or so to talk  
30 about it.  
31 MR. RUSS HERMAN:  
32 I can tell you that every witness  
17832  
1 that takes that stand is going to be  
2 cross-examined on company documents.  
3 MR. LONG:  
4 I can tell you you will hear  
5 objections on that.  
6 MR. RUSS HERMAN:  
7 I'm certain I will, and the Judge  
8 will have to rule, won't he?  
9 MR. LONG:  
10 Yes.  
11 THE COURT:  
12 We will recess until --  
13 MR. REDFEARN:  
14 Your Honor, one other point. It's an  
15 easy one.  
16 You had taken one document under  
17 advisement. We were just checking for  
18 completeness. It was Exhibit 2821.01.  
19 It is in fact complete. And as long  
20 as it was complete, there was no objection  
21 to that. Mr. Copley?  
22 MR. COPLEY:  
23 Yes, it is complete, Your Honor.  
24 MR. SCHNEIDER:  
25 Your Honor --  
26 THE COURT:  
27 Just a moment. Let me make a note of  
28 that, please.  
29 When did I consider the arguments on  
30 that document?  
31 MR. REDFEARN:  
32 It would have been last Friday or  
17833  
1 Thursday.  
2 MS. WIMBERLY:  
3 It was the 27th.  
4 MR. REDFEARN:  
5 The 27th, Your Honor.  
6 THE COURT:  
7 2821.01.  
8 MR. REDFEARN:  
9 Yes, Your Honor.  
10 THE COURT:  
11 And it is complete?  
12 MR. REDFEARN:  
13 Yes, Your Honor.  
14 THE COURT:  
15 Was it objected to?

16 MR. REDFEARN:  
17 No, Your Honor. As long as it was  
18 complete, there was no objection.  
19 MR. COPLEY:  
20 That's correct, Your Honor.  
21 THE COURT:  
22 With no objection, it will be  
23 received.  
24 All right. We will talk about  
25 scheduling after the jury is discharged at  
26 1:00.  
27 MR. WITTMANN:  
28 Just so I'm clear on this, my  
29 understanding in view of the stipulation,  
30 all that will happen when the jury comes  
31 back is plaintiffs will announce they rest  
32 their case, as Mr. Herman has stated?

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1 THE COURT:  
2 Yes. And then I will discharge the  
3 jury until 1:00 on Monday, April 7th.  
4 That's my plan.  
5 MR. WITTMANN:  
6 Okay.  
7 THE COURT:  
8 And we will decide what we do between  
9 now and then after that happens.  
10 MR. SCHNEIDER:  
11 Your Honor, one point with respect to  
12 the stipulation.  
13 THE COURT:  
14 Mr. Herman, listen up, please.  
15 MR. SCHNEIDER:  
16 My understanding of the stipulation  
17 is it's designed to assist the plaintiffs  
18 to facilitate the process of them resting  
19 the case today, so we can file our  
20 directed verdict motions today, so they  
21 can respond on the schedule Your Honor  
22 stated, so that we can argue those  
23 directed verdict motions on Monday, and  
24 the Court can or cannot rule at that time,  
25 if it wants to.

26 But that this process, the process of  
27 ruling on these privileged documents, is  
28 not designed to delay that or delay the  
29 start of our case, and that it should not  
30 be necessary for us to have to schedule  
31 hearings between now and then on 75  
32 documents.

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1 And that's my understanding of what  
2 we are trying to do here.  
3 THE COURT:  
4 That's not my understanding,  
5 Mr. Schneider. Mr. Herman has indicated  
6 that he wants rulings on all these  
7 documents before the first defense witness  
8 stakes the stand.  
9 Am I correct, Mr. Herman?  
10 MR. RUSS HERMAN:  
11 Absolutely.  
12 THE COURT:



13           Then we have that scheduling problem  
14 to deal with. And we will deal with that  
15 at 1:00.

16           I would suggest to you that maybe if  
17 both sides talk, some of those issues can  
18 be simplified, some of the work  
19 shortened.

20           But I don't have the ability to do  
21 it. I'm here to do what the law requires  
22 that I do to conduct this trial.

23           If you folks can agree on something  
24 that reduces that, that's fine. Otherwise  
25 I will do what I think I have to do.

26           MR. WITTMANN:

27           Thank you, Your Honor.

28           THE COURT:

29           We will resume at 1:00.

30           (Whereupon, the hearing adjourns at  
31 11:55 a.m.)  
32

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1           REPORTER'S CERTIFICATE  
2

3           I, NICHOLAS A. MARRONE, CCR, Registered  
4 Merit Reporter, do hereby certify that the foregoing  
5 proceedings were reported by me in shorthand and  
6 transcribed under my personal direction and  
7 supervision, and is a true and correct transcript,  
8 to the best of my ability and understanding.

9           That I am not of counsel, not related to  
10 counsel or the parties hereto, and not in any way  
11 interested in the outcome of this matter.  
12

13  
14           \_\_\_\_\_  
NICHOLAS A. MARRONE (CCR 21011)  
CERTIFIED COURT REPORTER  
15 REGISTERED MERIT REPORTER  
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